UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
Address: COMMISSIONER FOR PATENTS
P.O. Box 1450
Alexandria, Virginia 22313-1450
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/720,798	03/09/2001	Pieter Lykle Buwalda	294-92-PCT/U	5541

23869 7590 06/09/2003

HOFFMANN & BARON, LLP
6900 JERICHO TURNPIKE
SYOSSET, NY 11791

EXAMINER
HENDRICKS, KEITH D

ART UNIT	PAPER NUMBER
1761	

DATE MAILED: 06/09/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No.	Applicant(s)	
	09/720,798	BUWALDA ET AL.	
	Examiner	Art Unit	
	Keith Hendricks	1761	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☐ Responsive to communication(s) filed on _____ .

2a)☐ This action is **FINAL**. 2b)☒ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) *1-18 and 21-42* is/are pending in the application.

4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) *1-18 and 21-42* is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☐ The drawing(s) filed on _____ is/are: a)☐ accepted or b)☐ objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

11)☐ The proposed drawing correction filed on _____ is: a)☐ approved b)☐ disapproved by the Examiner.

If approved, corrected drawings are required in reply to this Office action.

12)☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

13)☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a)☒ All b)☐ Some * c)☐ None of:

1.☐ Certified copies of the priority documents have been received.

2.☐ Certified copies of the priority documents have been received in Application No. _____ .

3.☒ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

14)☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).

a) ☐ The translation of the foreign language provisional application has been received.

15)☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

1) ☐ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) _____ .
4) ☐ Interview Summary (PTO-413) Paper No(s). _____ .
5) ☐ Notice of Informal Patent Application (PTO-152)
6) ☐ Other:

DETAILED ACTION

Claim Rejections - 35 USC § 112

The following is a quotation of the second paragraph of 35 U.S.C. 112:

> The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claims 2, 7, 9, 11-12, 14, 16, 21-22, 28-29, 33, 35-36, 38 and 40, are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

The term "improved" in claim 2 is a relative term which renders the claim indefinite. The term is not defined by the claim, the specification does not provide a standard for ascertaining the requisite degree, and one of ordinary skill in the art would not be reasonably apprised of the scope of the invention. Further, it is unclear over what composition and state that the texture is "improved".

Claims 7 and 29 are indefinite for the term "stabilised." Initially, this and other terms should be spelled according to accepted U.S. practice, i.e. "stabilized." Secondly, the term "stabilized" is not defined by the claim, and the specification does not provide a standard for ascertaining the requisite degree, does not disclose in what manner the starch is "stabilized", and against what it is stabilized.

Regarding claims 9,12, 14, 16, 33, 36, 38 and 40, the phrases "preferably" and "more preferably" render the claims indefinite because it is unclear whether the limitations following the phrase are part of the claimed invention. See MPEP § 2173.05(d). It is unclear as to what minimum level is required by the claim for each component recited therein.

Claims 21 and 28 state that the "starch is [selected from the group consisting of] phosphorous oxytrichloride or sodium trimataphosphate". This improperly and insufficiently describes the starch, *per se*. These claim limitations were originally found in claim 6, which provided for a cross-linked starch, which was cross-linked by the compounds recited above. However, a starch is not phosphorous oxytrichloride.

Claims 21-22 recite improper Markush-type language, due to the nesting of "selected from the group consisting of" (closed group language), and "or" (open group language). A broad range or limitation together with a narrow range or limitation that falls within the broad range or limitation (in the same claim) is considered indefinite, since the resulting claim does not clearly set forth the metes and bounds of the patent protection desired. A proper Markush-type grouping would recite "selected from the group consisting of... A, B, C and D."

Minor corrections & suggestions:

Claims 21 and 28 should be amended to correctly spell the term "trimetaphosphate".

In claim 22, line 1, the term "in" should be deleted.

In claims 11 and 35, it is unclear if the term "sodium monoglutamate" would be more appropriately recited as "monosodium glutamate", the more commonly-accepted term.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

> A person shall be entitled to a patent unless –
>
> (b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

i) Claims 1-5, 7, 9-10, 22-26, 29-30 and 32-34 are rejected under 35 U.S.C. 102(b) as being anticipated by Chang et al. (US PAT 5,192,576, of record).

Chang et al. disclose a thick-thin retort starch that is an oxidized, hydroxyalkylated starch made from, for example, a waxy (i.e. contains essentially only amylopectin) root starch such as potato starch. Columns 5-6 of the reference demonstrate the salt-stability of the starch, which "is an important feature since the salt content of food may vary from high, especially condensed soup products, to no salt added products" (top col. 6). A salt content of 1.8% is demonstrated with the starch. Example 4 shows the production of a starch slurry, with added salt, water and an acid or base.

Note that the claim limitation "wherein said starch is derived from a genetically modified plant" does not further limit or remove the claimed starch from that of the prior art, *per se*. Initially, this says nothing to the type of genetic modification, nor whether this modification even effects the starch molecules of the plant. Several types of "genetically modified" plants exist, with numerous phenotypic expressions which in no way relate to the starch content of the plant. Thus, the plant starch itself is not modified, even though the plant may, in some fashion, be altered. Finally, regarding the phrase "salt stable", this would be considered an inherent property of the referenced starches, as well as the instantly-claimed starch, due to the fact that the claimed starch provides for the same starting material and same modes of modification of the starting material, to arrive at the starch product. Absent any clear and convincing evidence and/or arguments to the contrary, the reference anticipates the claimed invention.

ii) Claims 1-7, 9-10, 12-18, 21-30, 32-34 and 36-42 are rejected under 35 U.S.C. 102(b) as being anticipated by Jeffcoat et al. (EP 0 796 868, of record).

Jeffcoat et al. disclose a stabilized, crosslinked hydroxypropylated waxy potato starch", which is "high in amylopectin" (pg. 2, line 12-13). The starch is cross-linked with an agent such as phosphorous oxychloride or sodium trimetaphosphate (mid-pg. 3). The starch may be used in a number of food products, including those listed at the bottom of page 3, such as sauces, dressings and soups. Example 8 shows a yogurt composition containing the modified starch, as well as non-fat milk solids, and sugar in an amount of 3%. Note that "sugar" is commonly taken in the art, as well as throughout the world, to indicate "sucrose", as in common table sugar, unless otherwise specified. Example 9 provides for a dressing composition containing the modified starch, as well as salt in an amount of 1.7%. Note that "salt" is commonly taken in the art, as well as throughout the world, to indicate "sodium chloride", as in common table salt, unless otherwise specified. Example 13 provides for a chicken noodle soup, which simply contains chicken broth, and the modified starch. Chicken broth meets the limitations of instant claims 18 and 42, directed to a "meat brine." Finally, those examples utilizing the starch with non-fat dry milk (solids), reads upon instant claims 12-15 and 36-40 reciting limitations of "milk protein", "caseine", and "calcium chloride" as the calcium salt, because casein and calcium salts are naturally provided in milk proteins, and thus are found in non-fat milk protein solids.

Note that the claim limitation "wherein said starch is derived from a genetically modified plant" does not further limit or remove the claimed starch from that of the prior art, *per se*. Initially, this says nothing to the type of genetic modification, nor whether this modification even effects the starch molecules of the plant. Several types of "genetically modified" plants exist, with numerous phenotypic expressions which in no way relate to the starch content of the plant. Thus, the plant starch itself is not modified, even though the plant may, in some fashion, be altered. Finally, regarding the phrase "salt stable", this would be considered an inherent property of the referenced starches, as well as the instantly-claimed starch, due to the fact that the claimed starch provides for the same starting material and same modes of modification of the starting material, to arrive at the starch product. Absent any clear and convincing evidence and/or arguments to the contrary, the reference anticipates the claimed invention.

iii) Claims 1-8, 16-17, 21, 23-29, 31-32, and 40-41 are rejected under 35 U.S.C. 102(b) as being anticipated by Chiu et al. (US PAT 4,228,199, of record).

Chiu et al. disclose a dried, stabilized, cross-linked pre-gelled potato starch. The starch is cross-linked with sodium trimetaphosphate. The limitation of an "instant starch" (claims 8 and 31) is met because the disclosed starch is pre-gelatinized and dried, and/or chemically modified to be cold-water dispersible to form a gel when dispersed in water (col. 5). Example VIII of the reference discloses a lemon pie filling containing the starch, as well as sugar in an amount of 26%. Note that "sugar" is commonly taken in the art, as well as throughout the world, to indicate "sucrose", as in common table sugar, unless otherwise specified.

Note that the claim limitation "wherein said starch is derived from a genetically modified plant" does not further limit or remove the claimed starch from that of the prior art, *per se*. Initially, this says nothing to the type of genetic modification, nor whether this modification even effects the starch molecules of the plant. Several types of "genetically modified" plants exist, with numerous phenotypic expressions which in no way relate to the starch content of the plant. Thus, the plant starch itself is not modified, even though the plant may, in some fashion, be altered. Finally, regarding the phrase "salt stable", this would be considered an inherent property of the referenced starches, as well as the instantly-claimed starch, due to the fact that the claimed starch provides for the same starting material and same modes of modification of the starting material, to arrive at the starch product. Absent any clear and convincing evidence and/or arguments to the contrary, the reference anticipates the claimed invention.

iv) Claims 1-6, 9-15, 23-27 and 32-39 are rejected under 35 U.S.C. 102(b) as being anticipated by Postner (US PAT 4,612,197, of record).

Postner discloses a sauce enhancer which comprises cream, egg yolk and a fat component. At column 2, lines 59-64, it is stated that the sauce "may be mixed with or without thickener... Suitable thickeners are starch derivatives having a low gelatinization temperature, particularly slightly crosslinked potato starches." Further stated in column 2 is the fact that "sodium glutamate may be added instead of sodium chloride or part of the sodium chloride in the preparation", and that "skim milk powder or any other dried milk derivative may be added to increase the milk solids." The examples demonstrate the use of skimmed milk powder at 17% of the composition, salt (sodium chloride) at 1.5% or 2.3%, and (sodium) glutamate at 5% or 7%.

Note that "salt" is commonly taken in the art, as well as throughout the world, to indicate "sodium chloride", as in common table salt, unless otherwise specified. The use of skim milk powder

reads upon instant claims 12-15 and 36-40 reciting limitations of "milk protein", "caseine", and "calcium chloride" as the calcium salt, because casein and calcium salts are naturally provided in milk proteins, and thus are found in non-fat milk protein solids. Note that the claim limitation "wherein said starch is derived from a genetically modified plant" does not further limit or remove the claimed starch from that of the prior art, *per se*. Initially, this says nothing to the type of genetic modification, nor whether this modification even effects the starch molecules of the plant. Several types of "genetically modified" plants exist, with numerous phenotypic expressions which in no way relate to the starch content of the plant. Thus, the plant starch itself is not modified, even though the plant may, in some fashion, be altered. Finally, regarding the phrase "salt stable", this would be considered an inherent property of the referenced starches, as well as the instantly-claimed starch, due to the fact that the claimed starch provides for the same starting material and same modes of modification of the starting material, to arrive at the starch product. Absent any clear and convincing evidence and/or arguments to the contrary, the reference anticipates the claimed invention.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Keith Hendricks whose telephone number is (703) 308-2959. The examiner can normally be reached on M-F (8:30am-6pm); First Friday off.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Milton Cano can be reached on (703) 308-3959. The fax phone numbers for the organization where this application or proceeding is assigned are (703) 872-9310 for regular communications and (703) 872-9565 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 308-0661.

KEITH HENDRICKS
PRIMARY EXAMINER